UNITED STATES PATENT AND TRADEMARK OFFICE

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

	Application No.	Applicant(s)
Office Action Summary	09/750,105	ROGERS ET AL.
	Examiner	**Art Unit**	
	JOSHUA TAYLOR	2426	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *17 March 2010*.

2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-3,8,9,24 and 31-45* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1-3,8,9,24 and 31-45* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on *29 December 2000* is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

1.   This Office Action is in response to an AMENDMENT entered March 17, 2010 for the

patent application 09/750,105 filed December 29, 2000.

2.   The previous Office Action of December 17, 2009 is fully incorporated into this Final

Office Action by reference.

Status of Claims

3.   Claims 1-3, 8-9, 24 and 31-45 are pending.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

4.   Claims 1-3, 8-9, 24, 34-36, 38, 41 and 44 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Zigmond et al. (Pat. No.: US 6,698,020) in view of Copriviza et al. (Pat. No.:

US 5,646,675), Hite et al. (Pat. No.: US 6,002,393) and Cohen et al. (Pat. No.: US 7,006,606).

Examiner's Note (EN): ¶15. below applies.

Regarding claim 1, Zigmond discloses **a method for inserting targeted advertisements**

into a media delivery stream during broadcast media programming (Fig. 3), **the method**

comprising: receiving and storing at a media delivery device a plurality of targeted

advertisements, wherein the plurality of targeted advertisements are selected for

transmission to the media delivery device by a transmitting entity based on user data

associated with the media delivery device (Figs. 1, 3, 5 and 7, col. 3, ln. 45 – col. 4, ln. 67)**;**

receiving and storing at the media delivery device data representing a set of characteristics

associated with each of the plurality of targeted advertisements (Fig. 5, element 80, col. 12,

ln. 15-32)**; receiving a signal at the media delivery device authorizing insertion of an**

advertisement into the media delivery stream during broadcast media programming,

wherein the signal is sent with the broadcast media programming (col. 15, ln. 35-65)**, and**

inserting the particular selected advertisement into the media delivery stream (col. 15, ln.

56-65)**. Zigmond does not disclose wherein one of the characteristics **includes at least a time**

that a particular target advertisement was last played by the media delivery device.

However, in analogous art, Copriviza discloses that the exact time at which an advertisement was

played can be tracked within a program (Figs. 15 and 16, col. 39, ln. 65 - col. 40, ln. 8. The

"Mars Skittle" advertisement was shown from the 5:55 time until the 6:10 time; the "Diet Coke"

advertisement was shown from the 6:25 time until the 6:55 time, etc.). Therefore, it would have

been obvious to one of ordinary skill in the art at the time of the invention to modify Zigmond to

allow for the time that a targeted advertisement was last played to be used as a characteristic

associated with said advertisement. This would have produced predictable and desirable results,

in that advertisers could know exactly when a certain advertisement had been played, and thus

would be able to set rules that governed how close to or far from, in terms of temporal proximity,

the playing of said advertisement was in relation to other advertisements, which could have the

predictable and desirable effect of allowing a toy company to request, for example, that there be

a one minute "buffer" between one of their advertisements and an advertisement for alcohol.

Neither Zigmond nor Copriviza explicitly disclose **and wherein the signal includes**

selection data specifying an allowable type of the advertisement that is authorized to be

inserted into the media delivery stream; identifying a set of allowable advertisements from

among the plurality of targeted advertisements by searching the data representing the set

of characteristics associated with each of the plurality of targeted advertisements using the

selection data, wherein the set of allowable advertisements includes advertisements that are

of the allowable type. However, in analogous art, Hite discloses that advertisements can be

assigned into certain categories, such as non-preemptable, conditionally preemptable, and

unconditionally preemptable (col. 2, ln. 18-38), and that instructions can be sent to a set-top box

that will tell the display which commercials to play and which to ignore (col. 4, ln. 4 – 56), and

also that a command signal can be sent to a display site for determining which advertisement is

to be displayed, wherein the command signal is generated based on information concerning the

type of each advertisement (see the language in claim 10). Since Zigmond discloses that

advertisements may be targeted to users based on user data, and Hite discloses that certain types

of commercials may be deemed allowable at the headend, it would have been obvious to one of

ordinary skill in the art at the time of the invention to modify Zigmond and Copriviza to allow

for commercials targeted to users to be further narrowed by commands from the headend. This

would have produced predictable and desirable results, in that users would continue to receive

advertisements selected based on user data, while advertisers would be able to more specifically

decide what type of commercial from within that set a user will see.

Both Zigmond and Hite disclose selecting commercials based on criteria, but neither

Zigmond, Hite nor Copriviza explicitly disclose **selecting a particular advertisement from the**

set of allowable advertisements to be inserted into the media delivery stream by applying a

weighting to at least one characteristic of each of the allowable advertisements of the set of

allowable advertisements and comparing at least one weighted characteristic of each of the

allowable advertisements. However, in analogous art, Cohen discloses a way of ascribing

attributes for the purpose of selecting an advertisement to be displayed. A consumer has certain

attributes, and these attributes represent codes responses attained or gleaned from information

sources. These attributes can be of any number but are illustrated here as being 10 in number in

Fig. 8. When the consumer is identified at the Web site 4, these 10 exemplary attributes are

recalled from the database 2 so as to be used in computing which ad to display. As illustrated in

FIG. 8 the advertiser 7 screens the 10 attributes at decision steps 411 420. These attributes can

then be scored and totaled at step 451 according to weights established by vendor 1. Vendors 8

and 9 go through a similar process. However, as illustrated, vendor 8 has a filter employed at

steps 421 and 425 such that this vendor's advertisement will not be played to certain consumers.

Likewise, vendor 9 has a different set of filter decision steps 432 and 437 439. The total scores

for each of the vendors from steps 421 430 and 431 440, respectively, are totaled at steps 452

and 453, respectively. The combined scores from the various vendors are then ranked and

ordered at decision step 454 to determine the advertisement to be displayed in space 623 in FIG.

6. In this way it is possible for a vendor to select a particular advertisement to direct to the

consumer 6 according to that consumer's attributes (Fig. 8, col. 13, ln. 49 – col. 15, ln. 17). It

would have been obvious to one of ordinary skill in the art at the time of the invention to utilize

Cohen's method, which selects one commercial to display from among many by using weights in

order to rank the commercials, and use this method in combination with the commercial

targeting methods of Zigmond, Copriviza and Hite. This would have produced predictable and

desirable results, in that situations could be resolved wherein more than one commercial met the

conditions for display using the teachings of Zigmond, Copriviza and Hite, by further ranking the

allowable commercials as per the teachings of Cohen, so that users would be presented with the

most relevant and appropriate commercial.

Regarding claim 2, Zigmond discloses **wherein the targeted advertisements are**

television commercials (col. 1, ln. 14-22 and col. 7, ln. 13-25).

Regarding claim 3, Zigmond discloses **wherein the media delivery device is a set top**

box for receiving broadcast signals for a cable or satellite television network system (col. 7,

ln. 1-12 and 37-51).

Regarding claim 8, Zigmond discloses **wherein the plurality of targeted**

advertisements are received by the media delivery device as encoded data files through a

telecommunications link to an external database of advertisements (col. 14, ln. 66 – col. 15,

ln. 17, col. 15, ln. 24-34).

Regarding claim 9, Zigmond discloses **further comprising: transmitting signals**

between the media delivery device and an external network, the signals including the user

data associated with the media delivery device, wherein the user data indicates types of

advertisements that appeal to users of the media delivery device (col. 9, ln. 21-55. A

statistics collection location may be at a remote site.).

Regarding claim 24, Zigmond discloses **a computer readable medium containing instructions for performing acts when executed on a computing device** (column 6. lines 48-61), **the acts comprising: receiving at a media delivery device a plurality of advertisements; storing at the media delivery device a plurality of targeted advertisements of the plurality of advertisements, wherein the plurality of targeted advertisements are selected based on user data associated with the media delivery device** (Figs. 1, 3, 5 and 7, col. 3, ln. 45 – col. 4, ln. 67); **receiving and storing at the media delivery device data representing a set of characteristics associated with each of the plurality of targeted advertisements** (Fig. 5, element 80, col. 12, ln. 15-32); **receiving a signal at the media delivery device authorizing insertion of an advertisement into a media delivery stream during broadcast media programming, wherein the signal is sent with the broadcast media programming** (col. 15, ln. 35-65), **inserting the particular selected advertisement into the media delivery stream** (col. 15, ln. 56-65).** Zigmond does not disclose wherein one of the characteristics **includes at least a time that a particular target advertisement was last played by the media delivery device.** However, in analogous art, Copriviza discloses that the exact time at which an advertisement was played can be tracked within a program (Figs. 15 and 16, col. 39, ln. 65 - col. 40, ln. 8. The "Mars Skittle" advertisement was shown from the 5:55 time until the 6:10 time; the "Diet Coke" advertisement was shown from the 6:25 time until the 6:55 time, etc.). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Zigmond to allow for the time that a targeted advertisement was last played to be used as a characteristic associated with said advertisement. This would have produced predictable and desirable results, in that advertisers could know exactly when a certain advertisement had been

played, and thus would be able to set rules that governed how close to or far from, in terms of

temporal proximity, the playing of said advertisement was in relation to other advertisements,

which could have the predictable and desirable effect of allowing a toy company to request, for

example, that there be a one minute "buffer" between one of their advertisements and an

advertisement for alcohol.

Neither Zigmond nor Copriviza explicitly disclose **wherein the signal includes selection**

data specifying an allowable type of the advertisement that is authorized to be inserted into

the media delivery stream; identifying a set of allowable advertisements from among the

plurality of targeted advertisements by searching the data representing the set of

characteristics associated with each of the plurality of targeted advertisements using the

selection data, wherein the set of allowable advertisements includes advertisements that are

of the allowable type. However, in analogous art, Hite discloses that advertisements can be

assigned into certain categories, such as non-preemptable, conditionally preemptable, and

unconditionally preemptable (col. 2, ln. 18-38), and that instructions can be sent to a set-top box

that will tell the display which commercials to play and which to ignore (col. 4, ln. 4 – 56), and

also that a command signal can be sent to a display site for determining which advertisement is

to be displayed, wherein the command signal is generated based on information concerning the

type of each advertisement (see the language in claim 10). Since Zigmond discloses that

advertisements may be targeted to users based on user data, and Hite discloses that certain types

of commercials may be deemed allowable at the headend, it would have been obvious to one of

ordinary skill in the art at the time of the invention to modify Zigmond and Copriviza to allow

for commercials targeted to users to be further narrowed by commands from the headend. This

would have produced predictable and desirable results, in that users would continue to receive advertisements selected based on user data, while advertisers would be able to more specifically decide what type of commercial from within that set a user will see.

Both Zigmond and Hite disclose selecting commercials based on criteria, but neither Zigmond, Hite nor Copriviza explicitly disclose **selecting a particular advertisement from the set of allowable advertisements to be inserted into the media delivery stream by applying a weighting to at least one characteristic of each of the stored allowable advertisements of the set of allowable advertisements and comparing weighted characteristics of each of the allowable advertisements.** However, in analogous art, Cohen discloses a way of ascribing attributes for the purpose of selecting an advertisement to be displayed. A consumer has certain attributes, and these attributes represent codes responses attained or gleaned from information sources. These attributes can be of any number but are illustrated here as being 10 in number in Fig. 8. When the consumer is identified at the Web site 4, these 10 exemplary attributes are recalled from the database 2 so as to be used in computing which ad to display. As illustrated in FIG. 8 the advertiser 7 screens the 10 attributes at decision steps 411 420. These attributes can then be scored and totaled at step 451 according to weights established by vendor 1. Vendors 8 and 9 go through a similar process. However, as illustrated, vendor 8 has a filter employed at steps 421 and 425 such that this vendor's advertisement will not be played to certain consumers. Likewise, vendor 9 has a different set of filter decision steps 432 and 437 439. The total scores for each of the vendors from steps 421 430 and 431 440, respectively, are totaled at steps 452 and 453, respectively. The combined scores from the various vendors are then ranked and ordered at decision step 454 to determine the advertisement to be displayed in space 623 in FIG.

6. In this way it is possible for a vendor to select a particular advertisement to direct to the

consumer 6 according to that consumer's attributes (Fig. 8, col. 13, ln. 49 – col. 15, ln. 17). It

would have been obvious to one of ordinary skill in the art at the time of the invention to utilize

Cohen's method, which selects one commercial to display from among many by using weights in

order to rank the commercials, and use this method in combination with the commercial

targeting methods of Zigmond, Copriviza and Hite. This would have produced predictable and

desirable results, in that situations could be resolved wherein more than one commercial met the

conditions for display using the teachings of Zigmond, Copriviza and Hite, by further ranking the

allowable commercials as per the teachings of Cohen, so that users would be presented with the

most relevant and appropriate commercial.

Regarding claim 34, the combined teaching of Zigmond, Copriviza, Hite and Cohen

discloses **the method of claim 1,** and Hite further discloses **wherein the set of characteristics**

includes information categorizing each of the plurality of targeted advertisements within a

hierarchy of categories (col. 2, ln. 18-38. The categories of non-preemptable, conditionally

preemptable, and unconditionally preemptable can be seen as a hierarchy. This claim is rejected

on the same grounds as claim 1.**).**

Regarding claim 35, the combined teaching of Zigmond, Copriviza, Hite and Cohen

discloses **the method of claim 34,** and Hite further discloses **wherein the selection data**

further includes categorization data designating a location in the hierarchy of categories,

wherein the particular selected advertisement includes a closest advertisement in the

hierarchy of categories to the designated location (col. 2, ln. 18-38. The commercial selected

is one that is closest to the categories of non-preemptable, conditionally preemptable, and

unconditionally preemptable. This claim is rejected on the same grounds as claim 1.)

Regarding claim 36, Zigmond discloses **further comprising: gathering the user data at**

the media delivery device; and sending the user data and a unique identifier of the media

delivery device to a transmitting entity (Figs. 4 and 5, element 61, col. 9, ln. 21-55).

Regarding claim 38, the combined teaching of Zigmond, Copriviza, Hite and Cohen

discloses **the method of claim 1,** and Hite further discloses **wherein the weighted**

characteristics further include a frequency at which a particular targeted advertisement of

the plurality of targeted advertisements has been inserted into the media stream (col. 2, ln.

66 – col. 3, ln. 8. This claim is rejected on the same grounds as claim 1.).

Regarding claim 41, Zigmond discloses **wherein the weighted characteristics further**

include a correlation between a product associated with an advertisement and subject

matter of a television program of the media delivery stream (col. 1, ln. 23-35. A type of

viewer can be associated with a television program, and thus advertisements and the products

they advertise, targeted to that viewer are correlated to the subject matter of the television

program.).

Regarding claim 44, Zigmond discloses **a media delivery device comprising: a**

network interface to receive a plurality of advertisements (Fig. 5); **a memory to store a**

plurality of targeted advertisements that are selected as targeted advertisements based on

user data associated with the media delivery device (Figs. 1, 3, 5 and 7, col. 3, ln. 45 – col. 4,

ln. 67) **and to store data representing a set of characteristics associated with each of the**

plurality of targeted advertisements (Fig. 5, element 80, col. 12, ln. 15-32); **and a processor**

coupled to the network interface and to the memory, the processor adapted to: detect a

signal authorizing insertion of an advertisement into a media delivery stream during

broadcast media programming, wherein the signal is sent with the broadcast media

programming (col. 15, ln. 35-65)**, insert the particular selected advertisement into the**

media delivery stream (col. 15, ln. 56-65)**.** Zigmond does not disclose wherein one of the

characteristics **includes at least a time that a particular target advertisement was last played**

by the media delivery device. However, in analogous art, Copriviza discloses that the exact

time at which an advertisement was played can be tracked within a program (Figs. 15 and 16,

col. 39, ln. 65 - col. 40, ln. 8. The "Mars Skittle" advertisement was shown from the 5:55 time

until the 6:10 time; the "Diet Coke" advertisement was shown from the 6:25 time until the 6:55

time, etc.). Therefore, it would have been obvious to one of ordinary skill in the art at the time of

the invention to modify Zigmond to allow for the time that a targeted advertisement was last

played to be used as a characteristic associated with said advertisement. This would have

produced predictable and desirable results, in that advertisers could know exactly when a certain

advertisement had been played, and thus would be able to set rules that governed how close to or

far from, in terms of temporal proximity, the playing of said advertisement was in relation to

other advertisements, which could have the predictable and desirable effect of allowing a toy

company to request, for example, that there be a one minute "buffer" between one of their

advertisements and an advertisement for alcohol.

Neither Zigmond nor Copriviza explicitly disclose **wherein the signal includes selection**

data specifying an allowable type of the advertisement that is authorized to be inserted into

the media delivery stream; identify a set of allowable advertisements from among the

plurality of targeted advertisements by searching the data representing the set of characteristics associated with each of the plurality of targeted advertisements using the selection data, wherein the set of allowable advertisements include advertisements that are of the allowable type. However, in analogous art, Hite discloses that advertisements can be assigned into certain categories, such as non-preemptable, conditionally preemptable, and unconditionally preemptable (col. 2, ln. 18-38), and that instructions can be sent to a set-top box that will tell the display which commercials to play and which to ignore (col. 4, ln. 4 – 56), and also that a command signal can be sent to a display site for determining which advertisement is to be displayed, wherein the command signal is generated based on information concerning the type of each advertisement (see the language in claim 10). Since Zigmond discloses that advertisements may be targeted to users based on user data, and Hite discloses that certain types of commercials may be deemed allowable at the headend, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Zigmond and Copriviza to allow for commercials targeted to users to be further narrowed by commands from the headend. This would have produced predictable and desirable results, in that users would continue to receive advertisements selected based on user data, while advertisers would be able to more specifically decide what type of commercial from within that set a user will see.

Both Zigmond and Hite disclose selecting commercials based on criteria, but neither Zigmond, Hite nor Copriviza explicitly disclose **select a particular advertisement from the set of allowable advertisements to be inserted into the media delivery stream by applying a weighting to at least one characteristic of each of the allowable advertisements of the set of allowable advertisements and comparing weighted characteristics of each of the allowable**

advertisements. However, in analogous art, Cohen discloses a way of ascribing attributes for the

purpose of selecting an advertisement to be displayed. A consumer has certain attributes, and

these attributes represent codes responses attained or gleaned from information sources. These

attributes can be of any number but are illustrated here as being 10 in number in Fig. 8. When the

consumer is identified at the Web site 4, these 10 exemplary attributes are recalled from the

database 2 so as to be used in computing which ad to display. As illustrated in FIG. 8 the

advertiser 7 screens the 10 attributes at decision steps 411 420. These attributes can then be

scored and totaled at step 451 according to weights established by vendor 1. Vendors 8 and 9 go

through a similar process. However, as illustrated, vendor 8 has a filter employed at steps 421

and 425 such that this vendor's advertisement will not be played to certain consumers. Likewise,

vendor 9 has a different set of filter decision steps 432 and 437 439. The total scores for each of

the vendors from steps 421 430 and 431 440, respectively, are totaled at steps 452 and 453,

respectively. The combined scores from the various vendors are then ranked and ordered at

decision step 454 to determine the advertisement to be displayed in space 623 in FIG. 6. In this

way it is possible for a vendor to select a particular advertisement to direct to the consumer 6

according to that consumer's attributes (Fig. 8, col. 13, ln. 49 – col. 15, ln. 17). It would have

been obvious to one of ordinary skill in the art at the time of the invention to utilize Cohen's

method, which selects one commercial to display from among many by using weights in order to

rank the commercials, and use this method in combination with the commercial targeting

methods of Zigmond, Copriviza and Hite. This would have produced predictable and desirable

results, in that situations could be resolved wherein more than one commercial met the

conditions for display using the teachings of Zigmond, Copriviza and Hite, by further ranking the

allowable commercials as per the teachings of Cohen, so that users would be presented with the

most relevant and appropriate commercial.

5.   Claims 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zigmond et al.

(Pat. No.: US 6,698,020) in view of Copriviza et al. (Pat. No.: US 5,646,675), Hite et al. (Pat.

No.: US 6,002,393) and Cohen et al. (Pat. No.: US 7,006,606), and further in view of Herz et al.

(Pat. No.: US 5,835,087).

Regarding claim 31, **the computer readable medium of claim 24** is rejected as stated

above, and Zigmond further discloses **wherein the weighted characteristics of each of the**

allowable advertisements that are compared further include contract condition associated

with each of the allowable advertisements (col. 8, ln. 12-28)**, and a type of product**

advertised (col. 12, ln. 60 – col. 13, ln. 6. Zigmond discloses a sponsor, such as the advertiser of

a current-release motion picture, as well as a type of product advertised, i.e. said motion

picture.)**, but does not explicitly disclose wherein the characteristics include **a relative pricing of**

the product advertised. However, in analogous art, Herz discloses the individual data that

describe a target object, which can be called attributes, may include numeric measurements, such

as the price of a product (col. 6, ln. 1-33). Therefore, it would have been obvious to one of

ordinary skill in the art at the time of the invention to allow the characteristics of Zigmond to

include a price of a product. This would have produced predictable and desirable results, in that

advertisements could be further targeted based on demographics such as the average income of a

target audience.

6.   Claims 32-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zigmond et

al. (Pat. No.: US 6,698,020) in view of Copriviza et al. (Pat. No.: US 5,646,675), Hite et al. (Pat.

No.: US 6,002,393) and Cohen et al. (Pat. No.: US 7,006,606), and further in view of Fuse et al.

(Pat. No.: US 6,078,412).

Regarding claim 32, **the method of claim 1** is rejected as stated above, but neither

Zigmond, Copriviza, Hite nor Cohen explicitly disclose **wherein the set of characteristics**

associated with each of the plurality of advertisements comprises a content type field and

wherein identifying the set of allowable advertisements comprises applying a bit mask to

the content type field of each of the plurality of targeted advertisements to identify

allowable advertisements from a hierarchy of categories, wherein general category types

are masked with high order bits and more specific category types are masked with low

order bits. However, in analogous art, Fuse discloses that high order bit information can have a

high importance, while low order bit information can have a low importance (column 5, lines 58-

67). Therefore, since it was well known in the art at the time of the invention to set up

information in a way that more important information was saved in the high order bit location, it

would have been obvious to one of ordinary skill in the art at the time of the invention to mask

the more important categories with higher order bits while masking the less important categories

with lower order bits, in order to implement the weighted system disclosed above.

Regarding claim 33, **the computer readable medium of claim 24** is rejected as stated

above, but neither Zigmond, Copriviza, Hite nor Cohen explicitly disclose **wherein the set of**

characteristics associated with each of the plurality of advertisements comprises a content type field and wherein identifying the set of allowable advertisements comprises applying a bit mask to the content type field of each of the targeted advertisements to identify allowable advertisements from a hierarchy of categories, wherein-general category types are masked with high order bits and more specific category types are masked with low order bits. However, in analogous art, Fuse discloses that high order bit information can have a high importance, while low order bit information can have a low importance (column 5, lines 58-67). Therefore, since it was well known in the art at the time of the invention to set up information in a way that more important information was saved in the high order bit location, it would have been obvious to one of ordinary skill in the art at the time of the invention to mask the more important categories with higher order bits while masking the less important categories with lower order bits, in order to implement the weighted system disclosed above.

7.   Claims 37 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zigmond et al. (Pat. No.: US 6,698,020) in view of Copriviza et al. (Pat. No.: US 5,646,675), Hite et al. (Pat. No.: US 6,002,393) and Cohen et al. (Pat. No.: US 7,006,606), and further in view of Cannon (Pat. No.: US 6,286,005).

Regarding claim 37, **the method of claim 1** is rejected as stated above, but neither Zigmond, Copriviza, Hite nor Cohen explicitly disclose **further comprising: gathering the user data at the media delivery device; determining, based on the user data, whether a particular targeted advertisement of the plurality of targeted advertisements is ineffective;**

and deleting the particular advertisement from the media delivery device when the particular advertisement is determined to be ineffective. However, in analogous art, Cannon discloses that advertisements may be scored based on their ability to meeting certain objectives, and can be deleted and replaced based on these scores (Fig. 13, col. 31, ln. 49 – col. 33, ln. 67). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Zigmond, Copriviza, Hite and Cohen to allow for ineffective advertisements to be deleted, as this would conserve memory space for more effective advertisements.

Regarding claim 39, **the method of claim 1** is rejected as stated above, but neither Zigmond, Copriviza, Hite nor Cohen explicitly disclose **wherein the weighted characteristics further include an amount to be paid by an advertiser.** However, in analogous art, Cannon discloses that cost can be used in an equation to find the best advertisement for a given time slot (col. 30, ln. 61 – col. 31, ln. 10, col. 37, ln. 65 – col. 38, ln. 19). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Zigmond, Copriviza, Hite and Cohen to allow for the amount paid by an advertiser to be a weighted characteristic. This would have produced predictable and desirable results, in that advertisers that paid more money could be assured of more desirable time slots with users more likely to buy the advertised products.

8.   Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zigmond et al. (Pat. No.: US 6,698,020) in view of Copriviza et al. (Pat. No.: US 5,646,675), Hite et al. (Pat.

No.: US 6,002,393) and Cohen et al. (Pat. No.: US 7,006,606), and further in view of Marsh et

al. (Pat. No.: US 6,876,974).

Regarding claim 40, **the method of claim 1** is rejected as stated above, but neither

Zigmond, Copriviza, Hite nor Cohen explicitly disclose **wherein the weighted characteristics**

further include an expiration date of a contract with an advertiser. However, in analogous

art, Marsh discloses that avoiding starvation, that is, where a commercial reaches its expiration

date without having reached its maximum number of exposures, is a condition that should be

avoided in order to maximize revenue (col. 9, ln. 51-65). Therefore, it would have been obvious

to one of ordinary skill in the art at the time of the invention to modify Zigmond, Copriviza, Hite

and Cohen to allow for an expiration date of a contract with an advertiser to be a weighted

characteristic. This would have produced predictable and desirable results, in that commercials

nearing an expiration period would be less likely to "starve" if the expiration data was factored in

as a weighed characteristic in the advertisement selection process.

9.   Claims 42-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zigmond et

al. (Pat. No.: US 6,698,020) in view of Copriviza et al. (Pat. No.: US 5,646,675), Hite et al. (Pat.

No.: US 6,002,393) and Cohen et al. (Pat. No.: US 7,006,606), and further in view of Cabral

(Pub. No.: US 2003/0149601).

Regarding claim 42, **the method of claim 1** is rejected as stated above, but neither

Zigmond, Copriviza, Hite nor Cohen explicitly disclose **wherein the selection data further**

specifies one or more restricted types of advertisements, and wherein the method further

includes excluding advertisements of the restricted types from the set of allowable

advertisements before selecting the particular advertisement to be inserted into the media

delivery stream. However, in analogous art concerning targeted advertising, Cabral discloses

that programs could restrict certain types of advertisements, such as advertisements for adults,

which may include alcohol or real estate, during certain times (para. [0058]). Therefore, it would

have been obvious to one of ordinary skill in the art at the time of the invention to modify

Zigmond, Copriviza, Hite and Cohen to allow for the selection data to specify certain types of

advertisements to be restricted. This would have produced predictable and desirable results, in

that children could be prevented from seeing undesirable content, such as advertisements for

alcohol.

Regarding claim 43, **the method of claim 1** is rejected as stated above, but neither

Zigmond, Copriviza, Hite nor Cohen explicitly disclose **wherein the selection data further**

specifies one or more prohibited sponsors of advertisements, and wherein the method

further includes excluding advertisements associated with the one or more prohibited

sponsors from the set of allowable advertisements before selecting the particular

advertisement to be inserted into the media delivery stream. However, in analogous art

concerning targeted advertising, Cabral discloses that programs could restrict certain types of

advertisements, such as advertisements for adults, which may include alcohol or real estate,

during certain times (para. [0058]), and thus sponsors such as Anheuser-Busch would be

restricted. Therefore, it would have been obvious to one of ordinary skill in the art at the time of

the invention to modify Zigmond, Copriviza, Hite and Cohen to allow for the selection data to

specify certain types of sponsors to be restricted. This would have produced predictable and

desirable results, in that children could be prevented from seeing undesirable content, such as

advertisements for alcohol.

10.   Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zigmond et al.

(Pat. No.: US 6,698,020) in view of Copriviza et al. (Pat. No.: US 5,646,675), Hite et al. (Pat.

No.: US 6,002,393) and Cohen et al. (Pat. No.: US 7,006,606), and further in view of do Rosario

Botelho et al. (Pub. No.: US 2002/0069105) and Aiken (Pat. No.: US 6,493,709).

Regarding claim 45, the combined teaching of Zigmond, Copriviza, Hite and Cohen

disclose **the media delivery device of claim 44, wherein the plurality of advertisements**

received by the network interface include the targeted advertisements selected based on the

user data associated with the media delivery device, but none explicitly disclose **wherein the**

plurality of advertisements further includes one or more additional advertisements that are

not targeted advertisements. However, in analogous art, do Rosario Botelho discloses that

systems can use targeted as well as non-targeted advertisements (para. [0003]), such as

displaying a targeted advertisement if valid selection information exists, and displaying a non-

targeted advertisement if valid selection information is not found (see language of claim 53).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the

invention to modify Zigmond, Copriviza, Hite and Cohen to allow for non-targeted

advertisements to be used along with targeted advertisements. This would have produced

predictable and desirable results, in that the advertisements pool would not be unnecessarily

depleted by restricting said pool to only targeted advertisements.

None of the above references explicitly disclose **wherein the processor is further adapted to: determine whether a particular advertisement received is a targeted advertisement based on the user data; search the memory to determine whether the particular advertisement is already saved in the memory when the particular advertisement is a targeted advertisement; and save the particular advertisement at the memory when the particular advertisement is not already saved in the memory, and not save the particular advertisement when the particular advertisement is already saved in the memory.** However, in analogous art concerning data storage, Aiken discloses that the ability to purge or delete documents and files containing redundant material is a useful feature (col. 2, ln. 45-51). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify to above art to allow for redundant copies of advertisements to be deleted. The motivation for such a combination would be to make better use of memory (Aiken, col. 2, ln. 45-51).

Response to Arguments

11.   Applicant's arguments, filed March 17, 2010 with respect to claims 1-3, 8-9, 24 and 31-45 have been considered but are moot in view of the new grounds of rejection.

Examination Considerations

12.   The claims and only the claims form the metes and bounds of the invention. "Office

personnel are to give the claims their broadest reasonable interpretation in light of the supporting

disclosure. *In re Morris,* 127 F.3d 1048, 1054-55, 44USPQ2d 1023, 1027-28 (Fed. Cir. 1997).

Limitations appearing in the specification but not recited in the claim are not read into the claim.

In re Prater, 415 F.2d, 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969)" (MPEP p 2100-

8, c 2, l 45-48; p 2100-9, c 1, l 1-4). The Examiner has full latitude to interpret each claim in the

broadest reasonable sense. Examiner will reference prior art using terminology familiar to one

of ordinary skill in the art. Such an approach is broad in concept and can be either explicit or

implicit in meaning.

13.   Examiner's Notes are provided with the cited references to prior art to assist the applicant

to better understand the nature of the prior art, application of such prior art and, as appropriate, to

further indicate other prior art that maybe applied in other office actions. Such comments are

entirely consistent with the intent and spirit of compact prosecution. However, and unless

otherwise stated, the Examiner's Notes are not prior art but a link to prior art that one of ordinary

skill in the art would find inherently appropriate.

14.   Unless otherwise annotated, Examiner's statements are to be interpreted in reference to

that of one of ordinary skill in the art. Statements made in reference to the condition of the

disclosure constitute, on the face of it, the basis and such would be obvious to one of ordinary

skill in the art, establishing thereby an inherent prima facie statement.

15.   Examiner's Opinion: ¶¶ 12.-14. apply. The Examiner has full latitude to interpret each

claim in the broadest reasonable sense.

Conclusion

16.   Claims 1-3, 8-9, 24 and 31-45 are rejected.

17.   Applicant's amendment necessitated the new ground(s) of rejection presented in this

Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this

final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to JOSHUA TAYLOR whose telephone number is (571) 270-3755.

The examiner can normally be reached on 8am-5pm, M-F, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Joseph Hirl can be reached on (571) 272-3685. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

like assistance from a USPTO Customer Service Representative or access to the automated

information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Josh Taylor/
Examiner, Art Unit 2426

/Joseph P. Hirl/
Supervisory Patent Examiner, Art Unit 2426
April 22, 2010